IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4977 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH Sd/-

HONOURABLE MR.JUSTICE K.A.PUJ Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ? YES
2	To be referred to the Reporter or not ? NO
3	Whether their Lordships wish to see the fair copy of the judgment ? NO
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? NO
5	Whether it is to be circulated to the civil judge ? NO

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EXPRESS HOSTELS PVT LTD & 1 - Petitioners
Versus
STATE OF GUJARAT THRO' SECRETARY & 3 - Respondents

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Appearance :
MR PARESH M DAVE WITH MR TEJAS M BAROT for Petitioners.
MRS VS PATHAK, AGP for Respondents : 1 - 3.
MR MD RANA for Respondent No. 4.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE K.A.PUJ

Date : 18/10/2007
CAV JUDGMENT
(Per : HONOURABLE MR.JUSTICE K.A.PUJ)

1. The petitioners have filed this petition under Article 226 of the Constitution of India challenging the order dated 13.09.2005 passed by the respondent No. 2 i.e. Commissioner of Tourism, Government of Gujarat, Gandhinagar on behalf of the 19th State Level Committee for Package of Incentives 1995–2000 for Tourism Project, on the ground that the impugned order has been passed contrary to the fundamental principle of Equity and Rule of Law i.e. Promissory estoppel in as much as the respondents have curtailed the tax incentives initially granted to the petitioner No. 1 Company under the New Package Scheme of Incentives for Tourism Projects 1995 – 2000.

2. It is the case of the petitioners that the Government of Gujarat had declared New Tourism Policy-1995 under which Tourism was accorded the status of an industry and a package of scheme of incentive for tourism projects, for the period 1995 – 2000 came to be announced vide Resolution No. NTP-1095/1983-C dated 20.12.1995 passed by the Information, Broadcasting and Tourism Department, Government of Gujarat. Under the said scheme of incentives, a tax holiday of 5 to 10 years was made available to newly set up tourism units as well as expansion of existing Tourism

units. The scheme of incentives granted tax holidays to expansion of existing units, for a period of 5 years, in respect of the following taxes :-

(1) Exemption from Sales Tax
(2) Exemption from Turnover Tax
(3) Exemption from Electricity Duty
(4) Exemption from Luxury Tax and
(5) Exemption from Entertainment Tax.

These exemptions are given for a period of 5 years to expansion of existing projects, subject to the condition that the existing tourism unit increases its investment in fixed capital or capacity by atleast 50% or more.

3. It is also the case of the petitioner Company that the petitioner Company met with the criteria of the scheme of incentives and applied for registration under the said Scheme. A temporary registration was granted by the respondent No. 2 on 30.10.1998. The petitioner Company thereafter applied for eligibility certificate to the respondent No. 2 vide its application dated 26.12.1998 and the eligibility certificate was issued by the respondent No. 2 for tax incentives to the petitioner Company for a maximum limit of Rs.84.03 Lacs as aggregated tax benefits for the period from 01.12.1998 to 28.02.2003. Out of the aggregate claim of Rs.98.86 Lacs, the respondent No. 2 had sanctioned the

eligible amount of tax benefit at Rs.84.03 Lacs for a period of 5 years from 01.12.1998 to 28.02.2003.

4. It is also the case of the petitioner Company that the correspondence was exchanged between the respondent No.3 and the petitioner Company in respect of Rs.25.53 Lacs sanctioned towards exemption / remission from electricity duty. Although the said amount by way of exemption / remission from electricity duty was sanctioned by the Sanctioning Authority for a period of 5 years, the respondent No. 3 issued a Certificate dated 16.02.2001 whereby period of exemption / remission of electricity duty was reduced from 5 years to 25 months i.e. from 12.01.2001 to 28.02.2003. The petitioner Company, therefore, made a representation to the respondent No. 2 vide its letter dated 12.04.2001 whereby it expressed its grievance that the exemption / remission from electricity duty as certified by respondent No. 3 would only result in curtailment of the tax incentive in as much as the actual utilization of this exemption / remission would be much less in the period certified by respondent No. 3. It was further stated in the said representation that the curtailment of period would result into loss of around Rs.18.53 Lacs by way of not being able to avail the exemption of electricity duty on account of restricting the eligibility period from 5 years to 25 months. The petitioner Company had also made

an alternative suggestion to the respondent No. 2 that in view of the curtailment in period of eligibility from 5 years to 25 months, in respect of electricity duty, the respondent No. 3 may suitably allocate the amount of loss in different taxes sanctioned by respondent No. 2 so that the real eligibility limit of Rs.84.03 Lacs will continue to be availed. The petitioner has also made further representation on 26.10.2001 requesting the respondent No.2 to reallocate the incentives as suggested earlier or as an alternative to extend the period upto 5 years in respect of electricity duty.

5. Despite the correspondence and representations made by the petitioners, the respondent No. 2 informed the petitioners vide his letter dated 16.07.2002 that the case of the petitioners was placed before the State Level Committee and the State Level Committee had rejected the modification of eligibility Certificate as requested by the petitioners. Being aggrieved by the said decision, the petitioners filed Special Civil Application No. 12326 of 2002 before this Court. In the said petition, the respondent No. 3 had filed reply contending that the benefit of remission of electricity duty is granted from the date of sealing of meters at site as per Condition No. 5 of Notification dated 05.04.1997 issued by Energy and Petrochemical Department, Government of Gujarat. Condition No. 5 of the said Notification provides for

installation of electric meters for expanded portion in case of an expansion of existing unit. According to the petitioner Company, the said condition does not say or provide that the eligibility for remission should be to the extent of energy consumed in the expanded unit and that too from the date of installation of meters. Special Civil Application No. 12326 of 2002 came to be withdrawn by the petitioners as this Court vide its order dated 24.02.2005 directed the competent authority to consider the representation, if made by the petitioners, in accordance with law. The petitioners thereafter made detailed representation on 15.03.2005 before the State Level Committee appointed under the Tourism Policy 1995–2000. The respondent No. 2, however, informed the petitioners vide his letter dated 13.09.2005 that the 19th State Level Committee (Package Scheme of incentives 1995 – 2000 for Tourism Projects) had rejected the petitioner's request for change in proportion and adjustment of incentives given to them without giving any cogent reason.

6. Mr. Paresh M. Dave, the learned advocate appearing for the petitioners submitted that there was no fault on the part of the petitioners due to which the period of eligibility for availing the benefit of remission of electricity duty, can be curtailed. When the petitioners came to learn about the requirement of installing separate meters for measuring the

units in respect of the expanded area, they immediately got three meters installed on 19.02.1999 for the expanded area. Subsequent to the installation of the said three meters for the expanded area, the Chief Auditor of respondent No. 3 vide his letter dated 05.03.1999 directed the petitioners to obtain a certificate from licensee i.e. Gujarat Electricity Board to the effect that the said meters are duly tested and sealed by the said licensee at site. The petitioners, therefore, vide letter dated 07.04.1999 requested the GEB to have site inspection for the purpose of testing and sealing the meters. The factum regarding installation of the meters as directed by respondent No. 3, vide his letter dated 05.03.1999, was brought to the notice of the respondent No. 3, along with the test report installation certificate by the petitioners vide their letter dated 11.05.1999. The petitioners were, therefore, of the view that there was no fault on the part of the petitioners in undertaking all the procedural formalities, required for enabling them to avail benefit of remission of electricity duty. However, it was due to the casual approach and laxity on the part of GEB that the respondent No. 3 issued the impugned Certificate curtailing the period of eligibility for remission of electricity duty with effect from 12.01.2001. Despite the fact that the respondent No. 3 informed the GEB about installation of meters by the petitioners, the GEB did not take required action completely ignoring the requests of the

petitioners and respondent No.3. The respondent No. 3, therefore, once again vide letter dated 05.12.2000 brought it to the notice of the GEB that the details as asked for by the respondent No. 3 vide letter dated 02.06.1999 were still not furnished and, therefore, once again requested to furnish the same immediately. After prolonged correspondence and several requests, the Officers of GEB ultimately visited the petitioner's premises on 12.01.2001 for the purpose of testing and sealing the meters installed by the petitioners in respect of the expanded area. It was in this view of the matter that the respondent No. 3 issued the impugned Certificate granting benefit of remission of electricity duty only from 12.01.2001 instead of 01.12.1998 i.e. the date of Eligibility Certificate.

7. Mr. Dave further submitted that the impugned order is ex-facie bad in law, violative of the fundamental rights of the petitioners under Articles 14 & 19 of the Constitution of India and passed against the rule of equity as well as in contravention of the provisions contained in the Scheme of Incentives. The impugned order is passed in total disregard of the order of this Court whereby the concerned authorities were directed to consider and decide the representation in accordance with law. He has further submitted that by virtue of granting eligibility to the petitioner Company for the tax

incentives under the Scheme of incentives, the respondents had held out a promise and the petitioners had acted in reliance on the promise by having invested substantial amount of monies. The petitioners are, therefore, entitled to enforce the promise against the respondents. He has further submitted that under the Scheme of Incentives, there is no distinction between a new tourism unit and an expansion of existing tourism unit in so far as complete exemption from different taxes is concerned. The Scheme does not differentiate between a new tourism unit and expansion of an existing tourism unit. In both the cases, the eligibility to exemption from various taxes applies in totality and not to the extent of expansion. The Notification dated 05.04.1997 issued by Energy and Petrochemical Department, Government of Gujarat has been relied upon by the respondent No. 3 both in its certificate issued on 16.02.2001 and the affidavit filed before this Court in Special Civil Application No. 12326 of 2002. There is nothing in the Notification dated 05.04.1997 which permits exemption from electricity duty only in respect of the expanded part of the existing unit. Condition 5 of the said Notification only provides for the provision of separate electricity meters to record consumption of electrical energy for the expanded portion. The said Clause does not say that the benefit of exemption from electricity duty shall only be eligible to the

expanded portion of the existing unit. Condition 6 & 7 of the said Notification provide for exemption / remission to eligible tourism unit to be made effective at a later date without changing the period for which exemption / remission is admissible and also provide that the certificate to be issued shall be for the exemption and the period of time as shown in the eligibility certificate issued by respondent No. 2. It is not the case of the respondents that the petitioner Company is not an eligible tourism unit. He has, therefore, submitted that there is no reason or rationale for issuing a certificate by respondent No. 3, in respect of exemption / remission of electricity duty for the period from 12.01.2001 to 28.02.2003. The petitioner Company was an eligible unit for a period of 5 years to avail the tax benefit to the extent of Rs. 84.03 Lacs which includes Rs. 23.53 Lacs by way of electricity duty, by virtue of eligibility certificate issued on 16.11.2000 by respondent No. 2. Despite this, the respondent No. 3 who was not an appropriate authority to grant eligibility has curtailed the period of electricity duty exemption / remission from five years to twenty five months only, thereby denied the petitioner Company the benefit of electricity duty exemption / remission to the tune of Rs. 18.53 Lacs.

8. Mr. Dave has further submitted that in terms of para 2 (b) of Notification dated 05.04.1997, an eligible unit is required to

apply to the Commissioner of Electricity Duty for exemption / remission within 90 days from the date of receipt of eligibility Certificate. The petitioner Company had admittedly applied to the respondent No. 3 for certificate of exemption / remission well within 90 days from receipt of eligibility certificate from respondent No. 2. It is not the case nor even it is alleged that the petitioner Company had made an application to the respondent No. 3 for exemption / remission of electricity duty after the expiry of 90 days period from the date of eligibility Certificate. The alternative submission made by the petitioner Company in its representation to the High Level Committee to adjust the shortfall in exemption / remission of electricity duty against other taxes ought to have been considered. By not doing so, the respondents have denied to the petitioner Company an exemption / remission of electricity duty to the tune of Rs. 18.53 Lacs which the petitioner Company was promised by the respondents to be given. The overall period of eligibility for various tax exemptions, amounting to Rs. 84.03 Lacs granted to the petitioner Company were from 01.12.1998 to 28.02.2003. Whereas the respondents have allowed by way of exemption from Luxury tax and sales tax for the entire unit, including the expanded unit of the petitioner Company, the respondents have not granted the electricity duty exemption for the entire period. Thereby, the respondents have very covertly,

insidiously and indirectly disallowed, by curtailing the eligibility duty, the benefit of exemption / remission of electricity duty as sanctioned. He has further submitted that the respondents have not given any relevant and cogent reasons for disallowing this benefit of exemption / remission of electricity duty even though the same has been sanctioned to the petitioner Company by the appropriate authority under the Scheme of incentives for Tourism projects.

9. Mr. Dave has further submitted that the respondent No. 3 ought to have issued the Certificate granting benefit of remission of electricity duty from 01.12.1998 instead of 12.01.2001 when the said meters were tested and sealed by the GEB. The respondent No. 3 was fully aware that the said meters were already installed way back on 19.02.1999 and it was due to delay only on the part of GEB that the said meters were tested and sealed on 12.01.2001. Even the respondent No. 3 on more than one occasion requested the GEB to have inspection and furnished the date of testing and sealing of meters at site, at the earliest to take further action in that behalf. However, respondent No. 3 despite being aware of all timely actions taken by the petitioners in fulfilling the procedural requirements as well as the laxity and delay, on the part of GEB, issued the impugned Certificate curtailing the eligible period for remission of electricity duty.

10. Mr. Dave has further submitted that the respondent No. 3, before issuing the impugned Certificate ought to have appreciated that the petitioners by getting the separate meters installed, had complied with condition No. 5 of Notification dated 05.04.197 published by Energy & Petrochemical Department. The petitioners, therefore, should have been declared eligible for remission of electricity duty at least from 19.02.1999. However, on account of grave delay committed by GEB in testing and sealing the separate meters installed by the petitioners, on 19.02.1999, the petitioners could not be made to suffer by curtailing the period of eligibility in respect of remission of electricity duty making the same available from the day GEB tested and sealed the meters i.e. for a period of 25 months only i.e. from 12.01.2001 to 28.02.2003. He has, therefore, submitted that it was incumbent upon the respondent No. 3 to have issued a modified Certificate as requested for by the petitioners. Mr. Dave has further submitted that in order to avoid the petition from being frustrated on the ground that even if the period of eligibility of remission of electricity duty is modified as requested by the petitioners, the same would not serve any useful purpose since the said period of eligibility has already expired. He has, therefore, submitted that an appropriate direction may be issued to the respondent No. 3 to allow

utilization of full benefit of remission of electricity duty to the extent of Rs. 25.53 Lacs in favour of the petitioners.

11. An affidavit-in-reply is field on behalf of respondent No. 2. Based on the said affidavit, Ms. V. S. Pathak, learned Assistant Government Pleader appearing for respondent Nos. 1 & 2 has submitted that the petitioner had applied for temporary registration Certificate No. 60 on 30.10.1998 for hotel expansion project at Vadodara by a proposed total estimate of Rs. 101.24 Lacs. The project has been completed on 09.10.1999. The petitioner has been issued an eligibility certificate for an amount of Rs.84.03 Lacs for expansion of its hotel project on 16.11.2000 based on the following break ups by incentives.

	Amount	Period
Exemption in Electricity Duty.	Rs.23.53 Lacs	01.12.1998 to 28.02.2003.
Exemption in Luxury Tax.	Rs.46.22 Lacs	01.12.1998 to 28.02.2003.
Exemption in Sales Tax.	Rs.14.28 Lacs	01.12.1998 to 28.02.2003.

12. The petitioner was given a benefit for remission of electricity duty for expanded portion only as per Condition No. 5 in the Notification issued by the Government of Gujarat, Energy and Petrochemical Department. So far as benefit of exemption of

electricity duty is concerned, the same was given to the petitioner for an amount of Rs.23.53 Lacs for a period between 01.12.1998 to 28.02.2003. The petitioner had installed the separate meters only in the year 2001 and, therefore, when the petitioner was not able to avail the exemption of the electricity duty granted to them since 1998, then the petitioner could not ask for any other or further benefits in this regard. It is further submitted that as per the order passed in Special Civil Application No. 12326 of 2002, the petitioner had made detailed representation before 9th State Level Committee (Package Scheme of Incentive 1995-2000 for Tourism Project) held on 29.08.2005 at Gandhinagar for reallocation, change in proportion and adjustment of incentive in the tourism policy in case of the petitioner. The State Level Committee rejected the reallocation. The Committee had decided that once the final eligibility certificate is issued after the unit exercised the option of proportion for which it wants the availment of taxes exemption, the proportion of the taxes shall not be changed thereafter. The scheme itself was floated to see that all the areas are given equal incentive and exemption and there was no polity in the whole scheme to make adjustment or reallocation of the incentive granted to the petitioner. Therefore, the decision of the State Level Committee rejecting the application of the petitioner is proper and

should not be interfered with. One of the conditions of the scheme, namely, New Package Scheme of Incentive for Tourism Project 1995-2000, provides in its condition (e) under the head of Condition No. 12 – other conditions that when all matters, interpretation, dispute or contention under the Scheme will be referred to the State Level Committee and decision of the State Level Committee will be finally binding to the petitioner unit. Therefore, the decision taken by the State Level Committee is final and there is no question of granting any exemption to the petitioner and hence, the petition deserves to be dismissed.

13. An affidavit-in-reply is filed on behalf of respondent No. 4. Mr. M. D. Rana, learned advocate appearing for respondent No. 4 has submitted on the basis of the reply that no fundamental or legal right of the petitioner is violated or whittled down by any action or inaction on the part of the respondent No. 4 GEB. The petitioner seeks the benefit of concession / remission in electricity duty under the proclaimed policy of the Government in order to encourage the Tourism Industry. The petitioner seeks the benefit under the Resolution which lays down the conditions to be fulfilled. The Officers of the Board are not at all responsible or negligent in installing and/or sealing the meters. Initially, the petitioner had fixed only one meter but thereafter the

petitioner Company had installed three meters so as to avail the benefits. The Notification dated 05.04.1997 issued and published in the Gazette contemplates installation of meters only and is silent about sealing. He has further submitted that the consumption of electrical energy for expanded portion has already started recording energy by the petitioner. The energy after installation had been consumed immediately which was evident from the chart prepared by the Officers. In the case of the petitioner, there would not be any such case of pilferage otherwise less consumption of units would not entitle him to the benefit of remission of duty. The petitioner would get the benefit only if the petitioner consumes more electricity. Since the petitioner has failed to consume more energy after installation in the year 1999, the Officers could not be blamed. The Board has rightly given the remission of approximately Rs.3,00,647.67. He has, therefore, submitted that there is no merit or substance in the petition and the petition deserves to be dismissed.

14. After having heard learned advocates appearing for the respective parties and after having gone trough the memo of petition, affidavits-in-reply filed on behalf of the respondents and the documents attached alongwith their respective pleadings, we are of the view that there is considerable force in the submissions of Mr. Dave, learned advocate appearing

for the petitioners. There is no dispute about the fact that the State Government had declared “New Tourism Policy – 1995” wherein tourism had been accorded the status of an industry, with a view to make available all fiscal and non-fiscal incentives, benefits, reliefs and concessions available to industries. The Scheme introduced by the State Government was known as “New Packages Scheme of Incentives for Tourism Projects – 1995 – 2000”. The said Scheme came into operation with effect from 01.08.1995 and remained in force for a period of five years upto 31.07.2000. Under the said Scheme, a new Tourism unit or an expansion of an existing unit was made eligible for incentives subject to conditions laid down in the Resolution dated 20.12.1995 passed by the State Government, Information, Broadcasting and Tourism Department. As per the said Scheme, all tourism projects which confirmed to the list given at Appendix B and also confirmed the detailed specifications were to be included as eligible units for the purpose of incentives under Tourism Package Incentive Scheme for Tourism 1995 – 2000. Appendix B, *inter alia*, contains hotel as one of the tourism units.

15. Under this Scheme, the petitioner was granted temporary registration Certificate on 30.10.1998 and it was made clear in the said Certificate that temporary registration would be

valid for two years from the date of the said Certificate. It was also made clear that the registration did not entitle its holder automatically to secure the Eligibility Certificate. The Commissionerate of Tourism, Government of Gujarat has granted Eligibility Certificate for tax incentive on 16.11.2000 in response to the application made on 26.12.1998. The said Eligibility Certificate was effective for the period from 01.12.1998 to 28.01.2003 and the State Level Committee had sanctioned eligible amount of Rs.84.03 Lacs for the said period. Despite this Eligibility Certificate dated 16.11.2000, the Commissionerate of Electricity, Gandhinagar had granted a Certificate and made the petitioner entitled to remission of electricity duty payable under item 4 (bb) / 7 of Schedule 1 to the Bombay Electricity Duty Act, 1968 in pursuance of Notification No. G-HU-97-27-ELD-1197-57-K dated 05.04.1997 in respect of separate meter No. 42431 only for the period from 12.01.2001 to 28.02.2003 to the maximum extent of Rs.23.53 Lacs.

16. The petitioner was aggrieved by this curtailment of period and hence, made representation on 12.04.2001 and pointed out that the actual utilization of the subsidy would be Rs.5 Lacs in two years and loss to the petitioner on account of reduced period of 2 years on the actual eligible amount is of Rs.18.53 Lacs. The petitioner has also pointed out to the

Commissionerate of Tourism vide its letter dated 23.03.2001 that no sooner the petitioner was informed about installation of separate meters to measure electricity consumption for the expanded unit, the petitioner had installed three meters after necessary testing done through Gujarat Electricity Board on 19.02.1999 and requested the concerned G.E.B. Officers for necessary site inspection and sealing the meters vide its letter dated 07.04.1999. It was further pointed out that due to delay by GEB in sealing these meters, the petitioner was given to an understanding that the Commissionerate of electricity duty granted the petitioner electricity duty exemption only from 12.01.2001 to 28.02.2003 i.e. only for 25 months as against its eligible period of 5 years. The petitioner has also requested the Commissionerate of Tourism to revise the allocated eligible amount and transfer some funds to sales tax duty as well as Luxury tax. The petitioner thereafter pursued the said matter with the respondent authorities time and again. However, the petitioner's request was not acceded to. The petitioner had also made representation to the State Level Committee pursuant to the directions issued by this Court in Special Civil Application No.12326 of 2002 decided on 24.02.2005. The said representation was rejected by the State Level Committee on 13.09.2005 without assigning any reason whatsoever. The said communication merely refers to that the State Level

Committee has decided not to consider the petitioner's request for change in proportion and adjustments of incentives given to the petitioner's unit for the Tourism Policy 1995 – 2000.

17. In the above background of the matter, if we examine the controversy raised before the Court and appreciate the respective submissions raised by the parties, it would be clear that there was no justification on the part of the respondent authorities to reduce the period of eligibility. It is true that the Eligibility Certificate granted by the respondent authority is for the period from 01.02.1998 to 28.02.2003 and out of the total tax incentive of Rs.84.03 Lacs, the remission from electricity duty was to the extent of Rs.23.53 Lacs. The Notification dated 05.04.1997 published by the Energy and Petrochemicals Department clearly states that the eligible tourism unit or existing eligible unit which is covered under para 3 of the Resolution dated 20.12.1995, were required to obtain Eligibility Certificate from the appropriate authority within 180 days of the commencement of commercial operation. The Eligibility Certificate was obtained by the petitioner on 16.11.2000. The eligible unit was required to make an application within 90 days from the date of receipt of the Eligibility Certificate, to the Commissionerate of Electricity, Gandhinagar for obtaining the Certificate for

remission of electricity duty. It was also made clear that if the application of an eligible Tourism unit for obtaining the Certificate for remission of electricity duty were received in the office of the Commissionerate of Electricity, Gandhinagar after expiry of the time limit specified in condition No.2, the Certificate of remission was to be made effective from the date on which the application was received by the Commissioner of electricity and in that case, the total period of remission would be reduced by the period of delay in submission of application under condition No.2. It is nobody's case that the petitioner had not made an application in time. Condition No.5 further stipulates that separate meters shall be provided by the eligible Tourism units, duly tested and sealed by the licensee, for recording consumption of electrical energy for expanded portion in case of expansion of an existing unit becoming eligible for the incentives under the said Resolution. This condition nowhere says that the remission from electricity duty is permissible only in respect of the expanded part of the existing Unit. At the most, it can be said that the condition No. 5 merely provides for the provision of separate electricity meters to record consumption of electrical energy for the expanded portion. It is the case of the petitioner that the petitioner had made repeated requests to the Gujarat Electricity Board for testing and sealing of the meters. However, due to delay on their

part, the testing and sealing of the meters was completed only on 12.01.2001 and because of that, the eligibility period was reduced from five years to 25 months only. The respondents are not justified to reduce this period after having granted tax incentives and on that basis, the petitioner had incurred certain expenses and made huge investment. The petitioner had acted on the basis of assurance given by the respondent authority and hence, it is not just and proper for the respondent authority to reduce the said period especially when the petitioner was not at fault.

18. Even the representation made by the petitioner was also not considered by the State Level Committee in its true perspective and no reasons whatsoever were assigned while rejecting the petitioner's representation.

19. Taking overall view of the matter and considering the documents on record as well as the provisions of the Scheme, we are of the view that the petitioner is entitled to the full sanctioned amount of electricity duty as a remission. We, therefore, allow this petition and hold that the petitioner is entitled to utilization of full benefit of exemption / remission of electricity duty for the period from 01.12.1998 to 28.02.2003. Since the said period is already over, we direct the respondents to make good the loss of incentive amounting

to Rs.18.53 Lacs which the petitioner was compelled to forgo despite the same being sanctioned.

20. This petition is accordingly allowed. Rule is made absolute without any order as to costs.

Sd/-

[M. S. SHAH, J.]

Sd/-

[K. A. PUJ, J.]

Savariya